CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 246.

WILLIAM CRAWFORD, APPELLANT,

vs.

WILLIAM L. RUBBELL, AS TREASURER OF THE ADAMS EXPRESS COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED APRIL 8, 1903.

(17,345.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1899.

1 United States Circuit Court of Appeals, Second Circuit.

Present: The Honorable William J. Wallace, the Honorable Nathaniel Shipman.

WILLIAM CRAWFORD, Complainant, Appellant,
vs.
WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company, Defendant, Appellee.

Certification of Questions to the Supreme Court under the Act of March 3, 1891.

This cause came before this court on February 2, 1899, upon an appeal taken by the complainant to review a decree of the circuit court, southern district of New York, sitting in equity. Such decree dismissed the bill. As to a question of law arising upon said appeal this court desires the instruction of the Supreme Court for its proper decision.

Statement of Facts.

This suit is for an injunction to restrain the express company from refusing to accept express packages from complainant for transportation, except upon the condition that complainant either pay for or provide the war-revenue stamp required to be affixed to each receipt in addition to its usual and ordinary charges for transportation as the same existed on and for a long time prior to July 1st, 1898. The defendant company since July 1st, 1898, has
2 fixed rates of compensation which it offers to accept for services rendered by it, whereby, in addition to the amount of its charges as the same existed on and for a long time prior to July 1st, 1898, it requires the shipper either to provide or pay for the cost of the stamp on the bill of lading or receipt required to be issued by the act of Congress of June 13, 1898, known as the "war-revenue act." It has made known these charges to shippers, and particularly to complainant, and refuses to accept packages for transportation except upon payment thereof. The pleadings are annexed to this certificate.

Questions Certified.

Upon the facts set forth, the questions of law concerning which this court desires the instruction of the Supreme Court for its proper decision are:

(1.) Does the war-revenue act of June 13, 1898, impose upon the carrier exclusively the tax represented by the stamp to be affixed to each bill of lading, manifest, or other evidence of receipt required to be issued to each shipper of goods accepted by the carrier for transportation, or does it impose the tax merely upon the trans-

action of shipment, leaving it to be paid indifferently by either party thereto?

(2.) If the war-revenue act of June 13, 1898, does impose such tax exclusively upon the carrier, does it preclude the carrier, who is by such act required to issue to each shipper a bill of lading, manifest, or other evidence of receipt, from relieving itself of the expense of affixing and cancelling the stamp required to be attached to such bill of lading, manifest, or other evidence of receipt?

3 In accordance with the provisions of section 6 of the act of March 3, 1891, establishing courts of appeal, etc., the foregoing questions of law are by the circuit court of appeals hereby certified to the Supreme Court.

WM. J. WALLACE,
U. S. Circuit Judge.
N. SHIPMAN,
U. S. Circuit Judge.

4 Supreme Court, County of New York.

WILLIAM CRAWFORD, Plaintiff,
against
WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company, Defendant. } Complaint.

The above-named plaintiff, by Dill, Seymour & Kellogg, its attorneys, complaining of the defendant, respectfully shows to the court:

I. That at all times hereinafter mentioned the above-named plaintiff was and is a retail merchant in the city of New York, carrying on said business as the sole surviving partner of the firm of Simpson, Crawford & Simpson, and under said firm name, and plaintiff has duly complied with all the requirements of law to entitle him to do business under said firm name.

II. That the said Adams Express Company at all the said times was and is an unincorporated association or joint stock company, consisting of seven or more persons, carrying on business in the city and State of New York, and elsewhere in the United States, and that the said association has and has had a president and treasurer; that the above-named defendant, William L. Hubbell, is the treasurer of the said Adams Express Company.

III. That the said Adams Express Company is now and
5 has been for many years last past engaged in the business of transporting and forwarding express packages between points located within the State of New York and those located within other States of the United States and between points located within such other States, as a common carrier, and that during the said time it has continuously held itself out to the public as an interstate and intrastate common carrier of express packages in the manner aforesaid.

IV. That in the course of its business as such common carrier, it has entered into contracts with various railroad companies having

terminals in the city of New York and elsewhere, whereby it has acquired the right to transport and forward such express packages over the lines of such railroads.

V. That the said Adams Express Company, among its other contracts, has entered into an arrangement or contract with the New York, New Haven and Hartford Railroad Company, whereby it has acquired exclusive right to forward and transport express packages over the lines of the said railroad between New York and Danbury, Connecticut, and that the said Adams Express Company is the only company or concern engaged in the business of forwarding and transporting express packages between New York and Danbury, either over the lines of the said New York, New Haven and Hartford railroad or over any other lines of railroad.

VI. That the business conducted by the said Adams Express Company at the times herein mentioned was and is of a public nature, involving the use of public highways, streets and franchises, and that the said Adams Express Company was and is a common carrier, and subject to all legal responsibilities as such.

6 VII. That heretofore and prior to the first day of July, 1888, the said Adams Express Company had established fixed and regular rates and charges for the forwarding and transportation of goods and chattels between New York and Danbury, and that the rate thus established and charged for packages of twenty pounds or under in weight and of a value less than $50, between New York and Danbury aforesaid, was thirty-five cents per package. That the said Adams Express Company, prior to the said time, had advertised and held itself out as willing and ready to forward and transport express packages of the said weight and value from New York to Danbury upon payment in advance to it by the shipper of the sum of thirty-five cents.

VIII. That at all the times mentioned herein, and for many years last past, the above-named plaintiff was and is carrying on the said business of retail merchant in the city of New York and elsewhere, with his principal office and place of business in the city, county and State of New York.

That from the nature of and in the course of his business, he is and has been, during said period, compelled to ship large quantities of goods to various parts of the United States by express, and that it has been and is of great importance to this plaintiff that such shipments should go by express and not by freight or otherwise, and that they should be promptly delivered at their places of destination under safeguard against loss such as express companies employ, and should be forwarded or transported at reasonable prices and charges. That the competition between plaintiff and his rivals in business in such that in the event of any inability to forward goods by express, as aforesaid, he would be subjected to great detriment and disadvantage and most seriously injured in his business.

That among the places to which plaintiff is frequently compelled to thus ship goods by express is Danbury, Connecticut, above

7 mentioned, and that the only express company forwarding or transporting goods between New York and said Danbury is the said Adams Express Company.

That the said plaintiff has also made very large express shipments for many years last past over the lines of the Adams Express Company to other places upon the said lines, and has likewise shipped very largely over the lines of other express companies carrying goods from New York to other localities. That the average number of express shipments heretofore made by the plaintiff over all of the said express lines from the city of New York has not been less than 2,500 per month, and for the month of June, 1898, was twenty-nine hundred and seventy-six, and that the average number of shipments heretofore made by the plaintiff over the lines of the Adams Express Company has not been less than seven hundred shipments per month, and for the month of June, 1898, was seven hundred and sixty-nine. That the plaintiff's business has been and is growing and extending, and that the aggregate number of shipments which the plaintiff will hereafter be required to make in the regular and ordinary course of its business over the lines of the said Adams Express Company and of the other express companies having terminals in New York, will not be less than the amount of shipments in the past.

IX. That on the 15th day of August, 1898, the above-named plaintiff, in the regular course of his business, offered and tendered to the said Adams Express Company at its office in the city of New York, a parcel of merchandise and requested the shipment, forwarding and transportation thereof to said Danbury, Connecticut, which is located on the line of the said New York, New Haven and Hartford railroad. That the said parcel was of the kind and nature which the said Adams Express Company has heretofore held itself out and is now holding itself out as being willing and ready
8 to transport by express as a common carrier, was properly prepared for transportation, and the same was in weight less than twenty pounds, and in value was less than $50. That the said package was duly labeled and addressed to Messrs. Quinn & Scott, at said Danbury. That the said Quinn & Scott are and for a long time past have been regular customers of the plaintiff and doing business with and making purchases from the plaintiff, and that the contents of said package *was* so tendered for transportation as aforesaid, pursuant to a *bona fide* order therefor received by the plaintiff from the said Quinn & Scott. That said parcel or package was in all respects as to size, contents, wrapper, address and all other particulars, in strict conformity with the rules, regulations and requirements of the said Adams Express Company. That the plaintiff at the time of said tender of the said parcel, likewise tendered in legal tender money of the United States to the said Adams Express Company, the sum of thirty-five cents for the transportation thereof, and that the sum thus tendered was the amount of the charge or rate as established by the said Adams Express Company for such transportation prior to July 1, 1898.

X. That the said Adams Express Company refused to accept said package for shipment or transportation unless the plaintiff should pay in advance to the Adams Express Company the price or value of the stamp required by the act of Congress approved June 13,

1898, and entitled "An act to provide ways and means to meet war expenditures, and for other purposes," or furnish such stamp to be attached and canceled to the bill of lading, manifest, or other evidence of receipt or forwarding required by said act, to be issued by all express companies and common carriers to shippers or consignors.

Said Adams Express Company has stated to the plaintiff that it has raised and increased its rates as the same existed prior
9 to July 1, 1898, for the forwarding or transportation of such packages by adding thereto the amount or value of the said internal-revenue stamp required by law to be placed upon such bill of lading or receipt, for the purpose of reimbursing itself for the amount of such tax imposed by said act.

That upon the tender of the package for forwarding and transportation as aforesaid said Adams Express Company then and there refused to accept said package for forwarding or transportation unless the plaintiff should himself before the issue by the said Adams Express Company of any bill of lading or receipt therefore, attach to said bill of lading or receipt the stamp required by said act, or should pay in advance to the Adams Express Company the price or value of the stamp to be affixed thereto by said company.

XI. That the said Adams Express Company has further stated to plaintiff that it would accept no parcels, packages, bundles, boxes or bales for transportation by express to said Danbury or to any other point upon its lines, unless the shipper or consignor paid to it the price or value of the said stamp required to be attached and canceled to the said bill of lading or furnished the same, in addition to the amount of its rates as established prior to July 1, 1898, and has stated that it had raised or increased its rates for forwarding and transportation to all points reached by its system, by adding to all such rates as established prior to July 1, 1898, the price or value of the said revenue stamp, and that in the future they would not accept for shipment, forwarding or transportation from any shipper or consignor, any bundle, bale, package or parcel or article unless such shipper or consignor paid them the price or value of the said stamp in addition to the said rate established prior to July first, 1898.

XII. That thereupon the plaintiff refused to pay the
10 amount of the said stamp, and demanded of the said Adams Express Company that they accept the said package for transportation upon receipt of the rate tendered by the plaintiff, and inquired of the said Adams Express Company whether it had any other ground for its refusal to accept said package other than the non-payment of the said tax. That the said Adams Express Company still persisted in its refusal to accept said package for transportation, and stated that it had no other reason for its refusal than the refusal of the plaintiff to pay the amount of the said tax.

That the said plaintiff was unable to compel the said Adams Express Company to receive the said package, and that the same was not accepted or received by it.

XIII. That the said Adams Express Company as above stated is

the only company or concern carrying on the business of a common carrier of express packages between New York and said Danbury, and that by reason of the foregoing refusal and action it became impossible for the plaintiff to send the said package by express to said Quinn & Scott.

XIV. That the action taken by the Adams Express Company with regard to the requiring the shipper or consignor to pay the amount of the said tax has been also taken by the American Express Company, the United States Express Company, the Wells-Fargo Express Company and by all or nearly all of the express companies having terminals in the city of New York, and that all of the said express companies have refused and are refusing to accept for transportation any bundles, bales, packages, parcels or things, except upon the condition that the shipper or consignor furnish and pay to such express companies the amount or value of the said war-revenue stamp, in addition to the rates or charges for transportation as established by such express companies prior to July 1, 1898.

11 That by reason of said action on the part of all the said express companies, all or nearly all of the shippers of express packages in the city of New York, and a very large number in other parts of the United States, are prevented from shipping goods by express, except upon the payment of the tax aforesaid.

XV. Upon information and belief, that the said action on the part of the said Adams Express Company and the other express companies, in compelling the plaintiff and other shippers to pay the amount of the said tax, is unreasonable and unlawful and in violation of the statutes of the United States in such cases made and provided.

XVI. That by reason of the very large number of packages which plaintiff is required, in the ordinary course of its business to ship by express, the plaintiff will be subjected, unless relief is afforded by this court, to the necessity of bringing a very large number of suits for the recovery from time to time of such moneys as he may pay under protest, pursuant to the imposition of the said tax, and that the said necessity will result in a multiplicity of suits which would be disastrous in the highest degree to the plaintiff's rights, and would cause an excessive and inordinate expense, and would interfere most seriously with plaintiff's business and occupation, for all of which no adequate remedy would exist at law.

That by reason of the action of the Adams Express Company, as above stated, the said plaintiff will be hindered and delayed in the transportation of its goods by express, and its business and occupation will be otherwise interfered with, largely to its damage, and that the exact amount of such damage is wholly incapable of accurate compensation, and that the plaintiff will have no adequate remedy therefor at law.

12 XVII. That in the determination of the said question, not only the rights of the plaintiff, but of all other shippers of express packages in the city and State of New York and throughout the entire United States of America are likewise involved, and

that the interests of the said shippers with regard to the foregoing are identical with those of the plaintiff, and that to enforce said interests, unless relief be granted and the matter disposed of by injunction, a great multiplicity of suits will be required, to the excessive damage of such shippers and consignors, and for which no adequate remedy will otherwise exist.

Wherefore, the plaintiff demands judgment against the defendant and against the Adams Express Company, its agents, employees and servants, that they and each of them be enjoined, restrained and prohibited from refusing to accept and receive for forwarding and transportation, the said package tendered for forwarding and transportation, as set forth in the complaint upon the prepayment or offer to prepay the regular and established charges of such forwarding and transportation, to wit, the sum of thirty-five cents.

That they and each of them be enjoined, restrained and prohibited from refusing to accept and receive for forwarding and transportation and from refusing to forward and transport any other package or packages of the kind and character which the said Adams Express Company is accustomed to forward and transport, and of the kind and character of which the said Adams Express Company holds itself out to the public as a common carrier, when the offer or tender of such package shall be accompanied by the prepayment or offer to prepay the regular and established charges of the said Adams Express Company for such forwarding and transportation, exclusive of the United States revenue stamp required by said act of Congress approved June 13, 1898, to be affixed to the bill
13 of lading, manifest or other evidence of receipt and forwarding, and exclusive of the price, cost or value of such stamp.

That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff as a condition of forwarding and transporting a package or packages for the plaintiff that the plaintiff directly or indirectly furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff or any of its consignees as a condition of the forwarding and transportation and delivery of any package that the plaintiff or such consignee directly or indirectly furnish or pay for the United States revenue stamp required by such act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they and each of them be enjoined and required to accept and receive for forwarding and transportation and to forward and transport for the plaintiff any package or packages of the kind and character they are accustomed to forward and transport, and of the kind and character of which they hold themselves out to the public as common carriers, at the regular rates established by them prior to the first day of July, 1898, and without requiring from the plaintiff that he furnish or pay for the United States revenue stamp required by said act to be affixed to the bill of lading, manifest or other evidence of receipt and forwarding.

That they and each of them be enjoined, restrained and prohibited from requiring of the plaintiff as a condition of the plaintiff's employing the Adams Express Company as a common carrier that the plaintiff or its consignees, directly or indirectly, furnish or pay for the United States revenue stamp or stamps required by said act to be affixed to the bill of ladings, manifest or other evidence
14 of receipt and forwarding, either as a separate and distinct charge for forwarding and transportation or by way of an increased rate for such forwarding and transportation.

That pending the determination of this action a temporary order and injunction to the effect aforesaid be issued.

That plaintiff have such further other order or relief as may be equitable and just.

That the plaintiff recover from the defendant the costs and disbursements of this action.

DILL, SEYMOUR & KELLOGG,
Plaintiff's Attorneys, 27 Pine Street, New York City.

BOROUGH OF MANHATTAN, *City and County of New York,* } *ss:*

William Crawford, being duly sworn, says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM CRAWFORD.

Sworn to before me this 17th day of August, 1898.
JOHN J. RANAGAN,
Commissioner of Deeds, Borough of Manhattan, City of New York.

(Endorsed:) U. S. circuit court. Filed Jan. 16, 1899. John A. Shields, clerk.

15 Circuit Court of the United States for the Southern District of New York.

WILLIAM CRAWFORD, Plaintiff,
against
WILLIAM L. HUBBELL, as Treasurer of the Adams Express Company, Defendant. } Answer.

And now comes the above-named defendant, by Seward, Guthrie & Steele, his attorneys, and answers the complaint of the plaintiff above named, upon information and belief, as follows:

I. This defendant admits the allegations contained in the first paragraph or subdivision of said complaint.

II. This defendant admits the allegations contained in the second paragraph or subdivision of the said complaint.

III. This defendant admits the allegations contained in the third paragraph or subdivision of said complaint.

IV. In answer to the allegations contained in the fourth paragraph of the complaint, this defendant admits that the Adams Express Company, in the course of its business as a common carrier, entered into contracts with various railroad companies having terminals in the city of New York and elsewhere, whereby
16 it has acquired the right to forward express packages over the lines of such railroads; but this defendant says that the actual transportation over the lines of said railroads is performed by the railroad companies, respectively, and denies that said Express Company transports any packages over said railroads in any other sense than above set forth.

V. This defendant admits the allegations contained in the fifth paragraph or subdivision of said complaint, except that he denies that under its arrangement or contract with the New York, New Haven and Hartford Railroad Company said express company has acquired any right to transport express packages over the lines of said railroad, and alleges that the actual transportation of express packages over said lines is performed by the railroad company.

VI. Answering the allegations contained in the sixth paragraph or subdivision of said complaint, this defendant denies that the business conducted by the Adams Express Company, at the times mentioned in said complaint, or at any time, involve the use of public highways, streets or franchises, or that the same was of a public nature in any other sense than that the business of a common carrier, as the same is or may be carried on by individuals, is, by reason of its consisting of the rendition of services to the public, a business of a public nature.

VII. Answering the allegations contained in the seventh paragraph or subdivision of said complaint, this defendant denies that prior to July 1, 1898, the Adams Express Company had established fixed and regular rates and charges for the forwarding and transportation of goods and chattels between New York and Danbury, or that the rate thus established and charged for packages of twenty pounds and under in weight, and of a value less than fifty
17 dollars, between New York and Danbury aforesaid, was thirty-five cents per package, and this defendant denies that the Adams Express Company, prior to the said time, had advertised and held itself out as willing and ready to forward and transport express packages of the said weight and value, from New York to Danbury, upon payment in advance to it by the shipper of the sum of thirty-five cents; but this defendant admits that for some time prior to July 1, 1898, the Adams Express Company did demand and receive from the public for the forwarding of express matter between New York and Danbury regular and reasonable rates and charges by way of its compensation for the service, and that the usual, regular and reasonable rate thus demanded and received by it for express packages of twenty pounds or under in weight, and of a value less than fifty dollars, between New York and Danbury aforesaid, was, and for a long time had been, thirty-five cents per

package, and he admits that the Adams Express Company, prior to July 1, 1898, had held itself out as willing and ready to forward express packages of the said weight and value from New York to Danbury, upon payment in advance to it by the shipper of a reasonable compensation for the service, and that thirty-five cents was, prior to July 1, 1898, such reasonable compensation.

VIII. This defendant admits the allegations contained in the eighth paragraph or subdivision of said complaint.

IX. This defendant admits the allegations contained in the ninth paragraph or subdivision of said complaint, except that he denies that the sum of thirty-five cents tendered by the plaintiff, as therein alleged, was the amount of any charge or rate established by the Adams Express Company for such transportation prior to July 1, 1898; but he admits that the same was, prior to July 1, 1898,
18 the reasonable and usual charge demanded and received by it for such service.

X. Answering the allegations contained in the tenth paragraph or subdivision of said complaint, this defendant admits that the Adams Express Company refused to accept for shipment or transportation the package referred to in the complaint unless the plaintiff should pay in advance to the express company the price or value of the stamp required by the act of Congress, approved June 13, 1898, and entitled, "An act to provide ways and means to meet war expenditures, and for other purposes," or furnish such stamp to be attached to the bill of lading, manifest or other evidence of the receipt or forwarding of the package required by the said act of Congress to be issued by all express companies or common carriers to shippers or consignors. This defendant denies that the Adams Express Company has stated to the plaintiff that it has raised or increased its rates as the same existed prior to July 1, 1898, for the forwarding or transportation of such packages by adding thereto the amount or value of the said internal-revenue stamp required by law to be placed upon such bill of lading or receipt for the purpose of reimbursing itself for the amount of such tax imposed by said act; and this defendant alleges that the Adams Express Company stated to the plaintiff that from and after July 1, 1898, all its rates were quoted plus the amount of the stamp required by said act to be affixed to the bill of lading or receipt for goods accepted by the Adams Express Company for transportation. This defendant admits that upon the tender of the said package for forwarding and transportation as aforesaid, the Adams Express Company then and there refused to accept said package for forwarding or transportation unless the plaintiff should himself, before the issue by the Adams Express Company of any bill of lading or receipt therefor, furnish the stamp required by said act to be attached thereto,
19 or should pay in advance to the Adams Express Company the price or value of the same to be affixed thereto by said company, but this defendant denies that the Adams Express Company then and there refused to accept said package for forwarding or transportation unless the plaintiff should himself, before the issue by the Adams Express Company of any bill of lading or receipt

therefor, attach to said bill of lading or receipt the stamp required by said act.

XI. Answering the allegations contained in the eleventh paragraph or subdivision of said complaint, this defendant admits that the Adams Express Company stated to the plaintiff that it would accept no parcels, packages, bundles, boxes or bales for transportation by express to said Danbury, or to any other point upon its lines, unless the shipper or consignor paid to it the price or value of the said stamp required to be attached and canceled to the said bill of lading, or himself furnish such stamp, in addition to the amount of the usual and reasonable rates which it was accustomed to demand and receive for such service prior to July 1, 1898. But this defendant denies that the Adams Express Company stated that it had raised or increased its rates for forwarding and transporting to all points reached by its system by adding to all such rates as alleged to have been established prior to July 1, 1898, the price or value of the said revenue stamp, or that in the future the Adams Express Company would not accept for shipment, forwarding or transportation from any shipper or consignor any bundle, bale, package or parcel or article unless such shipper or consignor paid to the Adams Express Company the price or value of the said stamp in addition to the said rate alleged to have been established prior to July 1, 1898. And, on the contrary thereof, this defendant alleges that the said The Adams Express Company stated to the plaintiff that, from and after July 1, 1898, all its rates should be quoted plus the amount of the stamp required by said war-
20 revenue act, to be affixed to the bill of lading or receipt for goods accepted by the Adams Express Company for transportation.

XII. Answering the allegations contained in the twelfth paragraph or subdivision of said complaint, this defendant admits that thereupon the plaintiff refused to pay the amount of the said stamp, and demanded of the Adams Express Company that it accept the said package for transportation upon receipt of the rate tendered by the plaintiff, and inquired of the Adams Express Company whether it had any other ground for its refusal to accept said package other than the non-payment of the said tax, and he admits that the Adams Express Company still persisted in its refusal to accept said package for transportation, but he denies that it stated that it had no other reason for its refusal than the refusal of the plaintiff to pay the amount of the said tax, and avers that it stated to the said plaintiff that from and after July 1, 1898, all its rates for express service were quoted plus the amount of the stamp required by said act of Congress to be affixed to the bill of lading or receipt issued therefor, and that the reason for its refusal to accept said package was the refusal of the plaintiff either to furnish a stamp himself, such as required by said act, or to pay the amount of such stamp to be affixed by the Adams Express Company in addition to the charge of thirty-five cents which the said express company had been in the habit of demanding and receiving as its usual and reasonable charge for such services prior to July 1, 1898. This de-

fendant further admits that the said plaintiff was unable to compel the Adams Express Company to receive the said package, and that the same was not accepted or received by it.

XIII. Answering the allegations contained in the thirteenth paragraph or subdivision of said complaint, this defendant admits that the Adams Enpress Company, as in said complaint stated, is the only company or concern carrying on the business of a
21 common carrier of express packages between New York and Danbury, but he denies that by reason of the foregoing refusal and action on the part of the Adams Express Company it became impossible for the plaintiff to send the said package by express to said Danbury, for this defendant says that the Adams Express Company expressed to the said plaintiff its entire willingness to receive said package and forward the same to Danbury upon the receipt of that which had been, prior to July 1, 1898, its usual and regular charge for such service, provided the plaintiff would either himself furnish the said stamp required by said war-revenue act to be attached and canceled to the bill of lading or receipt for such package, or would pay to the Adams Express Company the amount or value of said stamp.

XIV. This defendant, on information and belief, admits the allegations contained in the fourteenth paragraph or subdivision of said complaint, except that he denies that all of the said express companies therein mentioned have refused and are refusing to accept for transportation any bundles, bales, packages, parcels or things, except upon the condition that the shipper or consignor furnish and pay to such express companies the amount or value of said war-revenue stamp in addition to the rates or charges for transportation, as alleged to have been established by such express companies prior to July 1, 1898. But this defendant admits that all the said express companies have refused and are refusing to accept for transportation any bundles, bales, packages, parcels or things, except upon condition that the shipper or consignor shall either furnish the stamp required by the said war-revenue act to be attached and canceled to the bill of lading or receipt issued therefor, or pay to such express companies the amount or value of said stamp in addition to the reasonable rates or charges which said express com-
22 panies were accustomed to demand and receive for such service prior to July 1, 1898.

XV. This defendant denies the allegations contained in the fifteenth paragraph or subdivision of said complaint, and denies that the said action on the part of the Adams Express Company in relation to said tax is unreasonable or unlawful or in violation of any statute of the United States.

XVI. Answering the allegations contained in the sixteenth paragraph or subdivision of said complaint, while this defendant denies that the said plaintiff is entitled to any relief in this action, or that his rights have in anywise been violated or infringed by any action on the part of the Adams Express Company, and while he alleges that the dealings of the Adams Express Company, in relation to the said tax are lawful and reasonable, yet this defendant admits if such

dealings were unreasonable and unlawful the plaintiff would, unless relief were afforded by this court, be subjected to the necessity of bringing a very large number of suits for the recovery, from time to time, of such moneys as he might pay under protest in relation to such tax, and that such necessity would result in a multiplicity of suits which would be injurious to the plaintiff's rights and would cause an excessive and inordinate expense, and would interfere most seriously with the plaintiff's business and occupation, and that if the said dealings of the Adams Express Company in relation to the said tax are unreasonable and unlawful the plaintiff has no adequate remedy at law therefor.

XVII. This defendant, further answering, on information and belief alleges that, as this defendant and the Adams Express Company are advised and believe, the provisions of the said act of Congress did not and do not impose any tax upon the business
23 or property of express companies or other carriers, but that it was and is the intention and effect of the said act to impose a tax upon the transactions of shipment of express packages, and to leave it to be determined by agreement of the parties or by the ordinary customs of business or trade whether the cost thereof should be defrayed by the shipper or consignor on the one hand, or by the express company or other carrier on the other hand; and this defendant avers that while under the said act of Congress it is the duty of the Adams Express Company to issue a bill of lading or receipt to every shipper from whom goods are accepted for transportation, and while a stamp must be affixed to such bill of lading and properly canceled, under and by the provisions of section 6 of said act, and other provisions thereof, the tax itself is provided to be paid either by the carrier who issues the bill of lading or receipt, or by the shipper or consignor for whose use or benefit the same is issued, thus leaving it to be determined by agreement of the parties or by the ordinary customs of trade, upon which party to the transaction the tax shall ultimately fall; and this defendant alleges that, as he is advised by counsel and verily believes, even if said war-revenue act by its terms imposes the said tax upon the business of the Adams Express Company, nevertheless said express company may lawfully collect the amount of said tax from its shippers in addition to the usual rates or charges which it was accustomed to demand and receive and which were just and reasonable prior to the imposition of said tax; and that the amount of its said usual and reasonable rates as the same were demanded and received by it prior to July 1, 1898, plus the amount of said tax, would be a fair and reasonable charge or rate for the services rendered by said express company in receiving, forwarding, and delivering such shipments after July 1, 1898; and this defendant avers that the Adams Express Company may lawfully require its shippers to pay the amount of such
24 tax in addition to its rates or charges as the same were demanded and received prior to July 1, 1898.

And the defendant, therefore, avers that, whatever may be the construction put upon said war-revenue act with reference to the matters and things in said complaint and herein set forth, the action

of the Adams Express Company in requiring the plaintiff and other shippers of express packages over its lines either to furnish the stamps required to be affixed and canceled to the bills of lading or receipts issued for such packages accepted by it for transportation, or to pay the Adams Express Company the amount thereof, was and is reasonable, just and lawful; and, if the value of the said stamp which the Adams Express Company required the plaintiff either to furnish or to pay for as a condition of accepting the said package for transportation should be deemed a part of the rate or charge demanded by the Adams Express Company for the service to be performed for the plaintiff in receiving, forwarding and delivering said package, that such rate or charge, including the value of such stamp, was and is just, reasonable and lawful.

Wherefore, the defendant prays that the complaint may be dismissed, with costs.

SEWARD, GUTHRIE & STEELE,
Solicitors for the Defendant,
40 *Wall Street, New York City.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Charles Steele, being duly sworn, doth depose and say: That he is a member of the firm of Seward, Guthrie & Steele, attorneys for the above-named defendant William L. Hubbell; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to
25 those matters he believes it to be true. That the reason why this verification is not made by the said defendant is that the said defendant is not within the city, county or State of New York. That deponent is also secretary of the Adams Express Company, and that the sources of deponent's knowledge and information in regard to the statements contained in the foregoing petition are his familiarity with and knowledge of the affairs of said The Adams Express Company, by reason of his position of secretary thereof, and also statements made to him by the president of said The Adams Express Company, and an inspection of the various papers and records of the company in connection therewith.

CHARLES STEELE.

Sworn to before me this 26th day of September, 1898.

CHAS. J. DODD,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

26 UNITED STATES OF AMERICA, }
Second Circuit, } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit—

Do hereby certify that the foregoing certificate in the cause entitled William Crawford, complainant, appellant, against William L.

Hubbell, as treasurer of the Adams Express Company, defendant, appellee, was duly filed and entered of record in my office, by order of said court, on the 7th day of February, 1899, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of New York, this 3rd day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, cancelled 2, 9, '99. W. P.]

27 [Endorsed:] United States circuit court of appeals, second circuit. Wm. Crawford, complainant, appellant, *vs.* Wm. L. Hubbell, as treasurer of Adams Express Co. Certificate. United States circuit court of appeals, second circuit. Filed Mar. 1, 1899. William Parkin, clerk.

Endorsed on cover: Certificate. File No., 17,345. U. S. C. C. of appeals, 2nd circuit. Term No., 248. William Crawford, appellant, *vs.* William L. Hubbell, as treasurer of the Adams Express Company. Filed April 3rd, 1899.